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Whitney Electric Corporation, d/b/a Barker Fowler Electric Motor Service and Local 665, International Brotherhood of Electrical Workers, AFL-CIO. Case 7-CA-36391(2)

April 28, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

Upon a charge filed by the Union on September 20, 1994, the General Counsel of the National Labor Relations Board issued a complaint on February 6, 1995, against Whitney Electric Corporation, d/b/a Barker Fowler Electric Motor Service, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On April 6, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 7, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 7, 1995, notified the Respondent that unless an answer were received by March 14, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation, with an office and place of business in Lansing, Michigan, has been engaged in the sale, repair, and service of electrical apparatus. During the fiscal year ending September 30, 1994, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of Michigan and derived gross revenues in excess of \$500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees, including motor repairmen and truck driver, employed by Respondent at its Lansing facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, which is effective from March 1, 1994, until March 1, 1995. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

In June 1994, unit employee Donald Wood was told that he was being disciplined under the collective-bargaining agreement. Thereafter, on August 18, 1994, the Union filed a grievance with respect to Donald Wood's discipline. On August 22, 1994, the Union orally requested information from the Respondent, as to what had occurred at the investigatory interview involving employee Donald Wood, what repairs had to be made on the job on which he had been working and for which he had been disciplined, and whether the job had come with any specifications from the customer.

On September 29, 1994, the Union, in writing, requested the following information concerning the job for which Donald Wood had been disciplined: How many coils were to be rewound?; Was the information on each of the coils the same?; Why was there no discipline decided at the first meeting involving Don Wood?; Was the transformer checked before it was sent to the customer and if so, what were the results?;

Is everything contained in the enclosed copy of the note to the file of Don Wood correct?

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, in the processing of a grievance.

Since about September 29, 1994, the Respondent has failed and refused to furnish the Union with the information requested above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide to the Union information it requested on September 29, 1994, which is necessary for, and relevant to, its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

ORDER

The National Labor Relations Board orders that the Respondent, Whitney Electric Corporation, d/b/a Barker Fowler Electric Motor Service, Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 665, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with requested information that is necessary for, and relevant to, its role as the exclusive collective-bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested on September 29, 1994.

(b) Post at its facility in Lansing, Michigan, copies of the attached notice marked "Appendix."¹ Copies of

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 1995

James M. Stephens, Member

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 665, International Brotherhood of Electrical Workers, AFL-CIO by failing and refusing to provide the Union with requested information that is necessary for, and relevant to, its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested on September 29, 1994.

WHITNEY ELECTRIC CORPORATION,
D/B/A BARKER FOWLER ELECTRIC
MOTOR SERVICE

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."